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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 3.8.2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

AND

THE HONOURABLE MR. JUSTICE M. JAICHANDREN

L.P.A.NO.51 OF 2002

Arulmigu Subramaia Swamy
Thirukoil, Tiruttani
by its Executive Officer

.. Appellant/Appellant

Vs.

1. K. Jagadeeswari
2. K.S. Palani
3. K.S. Udaya Kumar
4. K.S. Velmurugan
5. S.N. Devi
6. State Bank of India,
Tiruttani Branch,
by its Branch Manager,
Tiruttani P.O.
7. Syndicate Bank,
Tiruttani Branch,
by its Branch Manager,
Tiruttani P.O.

.. Respondents/Respondents

Letters Patent Appeal against the judgment of the learned single Judge dated 26.11.1998 made in C.M.A.No.787 of 1990 affirming the judgment and order date 30.3.1990 made in S.C.O.P.No.19 of 1988, on the file of the Court of the Principal Subordinate Judge, Kancheepuram.

For Appellant : Mr.R. Balasubramanian

For Respondents : Mr.M. Venkatachalapathy
1 to 5 Senior Advocate for
Mr.M. Sriram

Respondent-6 : Mr.K.S. Sundar

Respondent-7 : No Appearance

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J U D G M E N T

(Judgment of the Court was delivered by P.K. MISRA, J)

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Heard the learned counsels appearing for the parties.

2. This appeal is filed against the judgment of the learned single Judge in C.M.A.No.787 of 1990, dismissing the appeal filed by the present appellant. Such appeal was preferred against the order dated 30.3.1990 passed by the Subordinate Judge, Kancheepuram in S.C.O.P.No.19 of 1988.

3. In S.C.O.P.No.19 of 1988, it was contended that late Kollapuri Mudaliar had executed a Will on 7.3.1986, which was subsequently registered at Madras on 11.03.1986. Respondents 1 to 5 are the widow and sons and daughter of the pre-deceased son of Kollapuri Mudaliar, namely, Subramania Mudaliar. As per the said Will, certain amounts lying in deposits with the State Bank of India, Tiruttani Branch and Syndicate Bank, Tiruttani, namely, the present Respondent Nos.6 & 7, were bequeathed to the present appellant. It was further alleged that the respondents 1 to 5 without disclosing about such Will obtained a Succession Certificate in S.C.O.P.No.4 of 1987 on 11.8.1987 by indicating that Kollapuri Mudaliar died intestate. SCOP.No.19 of 1988 was filed for issuing Succession Certificate in favour of the present appellant. The appellant had also filed SCOP.No.6 of 1989 to set aside or cancel the Succession Certificate issued in favour of the respondents 1 to 5 in SCOP.No.4 of 1987. The case of the respondents was that no Will had been executed and Kollapuri Mudaliar was in fact being treated at Madras and he could not have gone to Tiruttani for executing the Will. The Subordinate Judge took both the SCOPs for hearing together and by a common order dated 30.3.1990, dismissed both the petitions on the finding that due execution of the Will has not been proved and, therefore, the Succession Certificate in favour of Respondents 1 to 5 has been rightly issued.

3. The appellant filed C.M.A.No.787 of 1990 against the order dismissing the SCOP.No.19 of 1988, but the order dismissing the SCOP.No.6 of 1989 was not challenged by filing any separate appeal. Learned single Judge on re-appreciation of the evidence on record, affirmed the findings of the Subordinate Judge on merit by holding that due execution of the Will has not been proved. Learned single Judge has also observed that at the relevant time the deceased was undergoing treatment and, therefore, he could not have gone to Tiruttani. Learned single Judge has also observed that only one appeal has been filed and since the order in SCOP.No.6 of 1989 had not been challenged, the Succession Certificate issued in favour of the respondents 1 to 5 in SCOP.No.4 of 1987 has therefore become final and as such one appeal is not maintainable. Such decision of the learned single Judge is challenged in the present Letters Patent

Appeal.



4. Learned counsel appearing for the appellant has submitted that findings of the courts below that the deceased Kollapuri Mudaliar was not in a position to visit Tiruttani as he was being treated for cancer is not correct as such conclusion is only based on the certificate issued by a Doctor of a private institute, but such Doctor has not been examined.

5. We have carefully gone through the materials on record so far as this aspect is concerned and we are of the view that such conclusion of the learned single Judge is not acceptable as the production of mere certificate without anything else cannot substantiate such a plea.

6. Learned single Judge has also observed that the Will was typed out in English, whereas the signature was appended in Telugu and there is no certificate that such Will was read over and explained to the executant in the language known to such executant. The other evidence on record also does not indicate that before signing the Will, such Will had been read over and explained to the executant to the language known to him. Therefore, even if the signature of the Will can be accepted to that of the deceased, in the absence of any proof of due execution, the conclusion of the Subordinate Judge and the learned single Judge that due execution of the Will has not been proved is not liable to be interfered with.

7. The present appellant has filed SCOP.No.6 of 1989 specifically praying for cancelling such Succession Certificate issued in SCOP.No.4 of 1987. Both the matters were taken up together and the trial court had rejected both the petitions filed by the appellant. Since no appeal was filed against the order relating to SCOP.No.6 of 1989, issuance of Succession Certificate in SCOP.No.4 of 1987 became final. Therefore, the learned single Judge has rightly observed that one appeal filed against SCOP.No.19 of 1988 in the absence of any appeal against the order relating to SCOP.No.6 of 1999 was not maintainable. As already noticed, the respondents 1 to 5 have also obtained a Succession Certificate in SCOP.No.4 of 1987 and on the basis of such Succession Certificate, the respondents were entitled to withdraw the amount from the 6th and 7th respondent banks. In the above view of the matter, the appeal is liable to be dismissed.

8. While the appeal was being heard, we had suggested to the respondents to consider the question of making substantial donation to the temple, which is a famous temple in Tamil Nadu, irrespective of the result of the appeal. Thereafter, the learned counsel appearing for the respondents has consulted the respondents and subsequently handed over two demand drafts, one for Rs.50,000/- and another for Rs.8,000/- as gift to the temple.



9. In the result, the appeal is dismissed and the respondents 1 to 5 are permitted to withdraw the amount lying in the respondent banks along with the accrued interest. The amount handed over to the appellant may be treated as gift to the temple.

dpk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Sub-Assistant Registrar, Judicial Section, High Court, Madras.

2. The Principal Subordinate Judge, Kancheepuram

3. The Record-keeper, V.R. Section, High Court, Madras

+ 1 cc to Mr. K. S. Sundar, Advocate SR No. 34556

+ 1 cc to Mr. M. Sriram, Advocate SR No. 34563

NG(CO)
SR/16.11.2006

JUDGMENT IN LPA.NO.51/2002